

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

E.A.,

Plaintiff,

COMPLAINT

-against-

ARCHDIOCESE OF NEW YORK, THE CHURCH OF ST. JEAN Index No. _____
BAPTISTE, and CONGREGATION OF THE BLESSED
SACRAMENT

Defendant.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

Plaintiff, E.A., by and through undersigned counsel, respectfully shows to this Court and
alleges as follows:

INTRODUCTION

This is a revival action brought pursuant to the New York Child Victims Act, CPLR § 214-g. Plaintiff, when he was a minor, was sexually assaulted by Father Raymond Fleurant, a priest and serial pedophile of the Archdiocese of New York, and member of the Congregation of the Blessed Sacrament, who at all times relevant hereto, was assigned to St. Jean Baptiste Catholic Church and St. Jean Baptiste Elementary School in New York, New York.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of the State of Delaware. Plaintiff brings this Complaint anonymously because of the sensitive nature of the allegations of child sexual abuse in the Complaint, which is a matter of the utmost intimacy. Plaintiff fears embarrassment and

further psychological damage if his identity as a victim of child sexual abuse were to become publicly known.

2. Defendant, ARCHDIOCESE OF NEW YORK, (hereafter referred to as the "ARCHDIOCESE"), is a religious institution and organization with principal offices located at 1011 1st Ave, New York, New York. The ARCHDIOCESE controls all Catholic religious, pastoral and educational functions at Catholic schools, hospitals and charities in eight counties, including New York County. Its authority extends over 296 parishes that serve around 2.8 million Catholics. The ARCHDIOCESE operates and controls approximately 370 parishes, 274 schools and 90 Catholic charities. The ARCHDIOCESE is a citizen and resident of the State of New York.

3. At all times relevant and material hereto, the ARCHDIOCESE owned, operated, controlled and/or managed St. Baptiste Elementary School located in New York, New York.

4. Defendant, THE CHURCH OF ST. JEAN BAPTISTE, (hereafter referred to as "ST. JEAN BAPTISTE"), is a Roman Catholic parish church in the Roman Catholic Archdiocese of New York, located at 184 E. 76th St., New York, New York. ST. JEAN BAPTISTE is a citizen and resident of the State of New York.

5. Defendant, CONGREGATION OF THE BLESSED SACRAMENT (hereafter, "the CONGREGATION"), is a religious congregation of priest and brothers within the Roman Catholic Church. The Congregation maintain a monastery adjacent to St. Jean Baptiste at 210 West 31st Street, New York, New York. The CONGREGATION is a citizen and resident of the State of New York.

6. At all times relevant and material hereto, the CONGREGATION owned, operated, controlled and/or managed the Church of St. Jean Baptiste located in New York, New York.

7. This Court has subject matter jurisdiction of this action pursuant to Article VI of the New York Constitution.

8. Personal jurisdiction lies over Defendants as they are present and domiciled in the State of New York.

9. Venue of this action lies in New York County as the Defendants each have their principal place of business in New York County.

FATHER FLEURANT'S SEXUAL ASSAULTS OF PLAINTIFF

10. Plaintiff was raised in a devout Catholic family. He attended St. Jean Baptiste School. He served as an altar boy at St. Jean Baptiste when he was in the 7th and 8th grades.

11. Plaintiff was often released during the school day from St. Jean Baptiste School to serve mass at St. Jean Baptiste Church.

12. At all times relevant and material hereto, Father Fleurant oversaw the altar boys at St. Jean Baptiste.

13. Father Fleurant's sexual abuse of Plaintiff began in approximately 1957 when Plaintiff was 11 years old. The sexual abuse lasted until approximately 1959, when Plaintiff was approximately 13 years old.

14. Father Fleurant sexually assaulted Plaintiff on multiple occasions when Plaintiff came to serve mass as an altar boy at St. Jean Baptiste. The sexual assaults took place when they were alone together in the sacristy or dressing room behind the altar.

15. The acts of sexual assault and abuse committed by Father Fleurant included, but were not limited to, tongue kissing, the fondling of Plaintiff's penis, putting Plaintiff's hand on his own penis, and digital penetration of Plaintiff's anus.

NOTICE - FORESEEABILITY

16. At all relevant times, Defendants knew or in the exercise of reasonable care should have known that Father Fleurant had a propensity for the conduct which caused injury to Plaintiff, particularly, that he had a propensity to engage in the sexual abuse of children.

17. At all relevant times, it was reasonably foreseeable to Defendants that Father Fleurant would commit acts of child sexual abuse or assault on children.

18. At all relevant times, Defendants knew or should have known that Father Fleurant was unfit, dangerous, and a threat to the health, safety and welfare of the minors entrusted to his ministry, counsel, care and/or protection.

19. With such actual or constructive knowledge, the Defendants' acts and omissions provided Father Fleurant with the opportunity to commit foreseeable acts of child sexual abuse or assault on Plaintiff.

Defendants' Concealment of Acts of Sexual Abuse by Priests

20. The Archbishop of the ARCHDIOCESE at all relevant times knew that Priests of the Archdiocese, under his supervision and control, were grooming and sexually molesting children with whom the Priests would have contact in their ministry and pastoral functions. At all relevant times, the Archbishop knew that this was a widespread, ubiquitous and systemic problem in the Archdiocese, involving many Priests and numerous victims.

21. Likewise, the CONGREGATION at all relevant times knew that Priests of the Congregation under its supervision and control were grooming and sexually molesting children with whom the Priests would have contact in their ministry and pastoral functions. At all relevant times, the Congregation knew that this was a widespread, ubiquitous and systemic problem in the Congregation, involving many Priests and numerous victims.

22. Despite receiving credible allegations of child sexual abuse against Priests, the Defendants acted to conceal allegations of sexual abuse in an effort to avoid scandal and accountability.

23. This concealment was in accordance with a policy of the Defendants, as agents, and the Holy See, as principal. In 1922, the Holy See released a confidential document to its Archbishops and other officials of Catholic organizations regarding the handling of cases of solicitation of sex in the confessional. This document mandated a specific procedure for Holy See's agents, including the Archbishop, to use when a cleric abused children using the confessional. This document required strict secrecy. The 1922 document showed that the Holy See and its agents were fully aware that there was a systemic problem of clergy sexually molesting children using the confessional.

24. In 1962, the Holy See released the confidential document, *Instruction on The Manner of Proceeding in Cases of Solicitation* (The Vatican Press, 1962) (hereinafter referred to as "*Crimen Sollicitationis*"). The heading of the document states, "From the Supreme and Holy Congregation of the Holy Office To All Patriarchs, Archbishops, Bishops and Other Diocesan Ordinaries 'Even of the Oriental Rite,'" and contains specific instructions regarding the handling of child sex abuse by clergy. According to the document itself, it is an "instruction, ordering upon those to whom it pertains to keep and observe it in the minutest detail." *Crimen Sollicitationis* at paragraph 24.

25. The 1962 document reinforced that the Holy See and its agents to whom the document was directed had knowledge that there was a systemic problem of Catholic clergy sexually molesting children using the confessional.

26. At the same time, the Holy See was involved in the formation of secret facilities in the United States where sexually offending clergy would be sent for short periods of time. In 1962-63, Fr. Gerald Fitzgerald reported to the Pope on the problem of abuse of children by clergy and expressed concerns if these priests were returned to active duty.

27. Fr. Fitzgerald's reports were kept secret under the Holy See's standing policy to avoid scandal at all costs. Its recommendation was ignored, however, and instead the Holy See made a choice to return known offending priests to active duty. At this point, it is clear that the Holy See and its agents, including the Defendants, knew they had a widespread problem of clergy sexually molesting minors, and they participated in the creation and the operation of facilities in the United States where sexually offending clergy could be sent before they were moved to another parish to work and potentially abuse again.

28. The Holy See's policy of secrecy under penalty of immediate removal from the organization (excommunication) for all involved in an accusation of child sexual abuse created a shroud of secrecy insulating Priests from consequence. Through this policy and others, the Holy See and its agents, including the Defendants, knowingly allowed, permitted and encouraged child sex abuse by Priests, including those under the control of Defendants.

29. The Holy See mandates secrecy for all those involved, including agents and itself, in handling allegations of sexual abuse. Penalties for child sexual abuse include an order to move offending priests to other locations once they have been determined to be "delinquent." In response to allegations, the document mandates that supplementary penalties include: "As often as, in the prudent judgment of the Ordinary, it seems necessary for the amendment of the delinquent, for the removal of the near occasion [of soliciting in the future], or for the prevention of scandal or reparation for it, there should be added a prescription for a prohibition of remaining

in a certain place.” *Crimen Sollicitations* at paragraph 64. Under this policy of secrecy and transfers or reassignments, all involved are threatened with excommunication and, thus, damnation, if they do not comply.

30. The policy of secrecy and the severest of penalties for its violation were reiterated in documents issued by officials of the Holy See for the benefit of its agents, including the Archbishop, in 1988 and 2001.

31. The policies and practices of the Defendants designed to conceal sexual abuse by clergy and protect them from scandal and liability included the following:

- a. transfer and reassignment of clergy known or suspected to abuse minors to deflect attention from reports or allegations of child sexual abuse;
- b. concealing from parishioners and even other clergy that a priest reassigned to their parish posed a danger of sexual abuse to children;
- c. failing to alert parishioners from the Priest’s prior assignments that their children were exposed to a known or suspected child molester;
- d. failing to report sexual abuse to criminal authorities; and
- e. otherwise protecting and fostering the interests of abusive clergy to the detriment of the victims and the community, for the purpose of avoiding scandal and public scrutiny.

32. Upon information and belief, the ARCHDIOCESE’S and the CONGREGATION’S transfers and reassignments of Father Fleurant were pursuant to this policy and practice designed to conceal sexual abuse of clergy and protect the Defendants from scandal.

33. Indeed, the policy of secrecy and lack of consequences for the sexual abuse of children was perceived as a perquisite by clergy sex abusers. The Holy See, the ARCHDIOCESE

and the CONGREGATION believed it to be perceived as a perquisite, which they condoned and used to their advantage in controlling Priests.

34. Plaintiff was in a zone of foreseeable harm as a child engaged in Catholic activities in close proximity to or with Catholic clergy.

35. The Defendants were in the best position to protect against the risk of harm as it knew of the systemic problem and foreseeable proclivities of their Priests to sexually abuse children.

36. At all relevant times, while the Defendants had special and unique knowledge of the risk of child sexual abuse by their Priests, such Priests who would prey on children were outside the reasonable contemplation of the Catholic community and families who trusted Priests to have access to their children.

37. Plaintiff had no opportunity to protect himself against a danger that was solely within the knowledge of the Defendants.

38. The Defendants knew a significant percentage of Priests were using their status and position to identify, recruit, groom and sexually assault vulnerable children in the Church.

39. All children engaging in Catholic activities within the Archdiocese were in this manner placed at risk of child sexual abuse.

DUTY

40. At all material times, the Defendants were in a special relationship with Plaintiff as a Catholic faithful with whom one of their ordained Priests would have contacts in the course of engaging in Catholic activities. Based on this special relationship, the Defendants owed Plaintiff a duty of reasonable care to protect him from foreseeable harm.

41. The Defendants and Father Fleurant were in a special relationship of employer – employee, when the Defendants knew or should have known that Father Fleurant posed a danger to children in his role as a Catholic Priest, and thus the Defendants owed a duty to control Father Fleurant to prevent foreseeable harm.

42. The Defendants owed a duty to Plaintiff to use reasonable care to protect the safety, care, well-being and health of the Plaintiff while he was under the care, custody or in the presence of Father Fleurant.

43. The Defendants owed a duty to exercise reasonable care in the hiring, retention and supervision of Father Fleurant.

44. The Defendants owed a duty in transferring or assigning Father Fleurant when it knew or should have known that he posed a danger to children in his duties and role as a Catholic Priest.

BREACH

45. The Defendants breached their duties by (i) hiring Father Fleurant as a Priest when they knew or should have known of his sexual proclivities for children; (ii) at all relevant times, retaining and failing to adequately supervise Father Fleurant as an active Priest of the ARCHDIOCESE, of the CONGREGATION, and of ST. JEAN BAPTISTE; and (iii) granting and maintaining Father Fleurant faculties as a Priest without making any warning or notice of his perverse sexual proclivities to the Catholic faithful who would have contacts with Father Fleurant.

46. At all relevant times, the Defendants had inadequate policies and procedures to protect children who would encounter their Catholic Priests in the course of their duties.

47. The Defendants concealed their knowledge that priests were unsafe and failed to adopt policies and procedures that would protect children and reduce the risk of child sexual abuse by their Priests.

48. The Defendants failed to warn Catholic families that their children were at risk of sexual abuse by Priests.

NATURE OF CONDUCT ALLEGED

49. This action alleges physical, psychological and emotional injuries suffered as a result of conduct which would constitute a sexual offense on a minor as defined in Article 130 of the New York Penal Law, including without limitation, conduct constituting rape (consisting of sexual intercourse) (N.Y. Penal Law §§ 130.25 – 130.35); criminal sexual act (consisting of oral or anal sexual conduct) (N.Y. Penal Law §§ 130.40 – 130.53), and/or sexual abuse (consisting of sexual contact) (N.Y. Penal Law §§ 130.55 – 130.77).

50. The limitation of liability set forth in CPLR Art. 16 is not applicable to the claim of personal injury alleged herein, by reason of one or more of the exemptions provided in CPLR § 1602, including without limitation, that Defendants acted with reckless disregard for the safety of others, including Plaintiff, or knowingly or intentionally, in concert with Father Fleurant, to retain Father Fleurant in ministry with unfettered access to children.

COUNT I - NEGLIGENCE **(against Defendant ARCHDIOCESE)**

51. Plaintiff repeats and realleges Paragraphs 1 through 50 above.

52. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

53. Defendant's acts and conduct showed a reckless or willful disregard for the safety and well-being of Plaintiff and other children.

COUNT II - NEGLIGENCE
(against Defendant ST. JEAN BAPTISTE)

54. Plaintiff repeats and realleges Paragraphs 1 through 50 above.

55. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

56. Defendant's acts and conduct showed a reckless or willful disregard for the safety and well-being of Plaintiff and other children.

COUNT III - NEGLIGENCE
(against Defendant CONGREGATION)

57. Plaintiff repeats and realleges Paragraphs 1 through 50 above.

58. As a direct and proximate result of Defendant's negligence, Plaintiff has suffered and continues to suffer severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life.

59. Defendant's acts and conduct showed a reckless or willful disregard for the safety and well-being of Plaintiff and other children.

WHEREFORE, Plaintiff demands Judgment against Defendants for compensatory damages, punitive damages, costs and such other and further relief as this Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a Jury Trial in this action.

Dated: New York, New York
November 18, 2019

Respectfully submitted,

HERMAN LAW
434 W. 33rd St., Penthouse
New York, NY 10001
Tel: 212-390-0100

By: _____

Jeff Herman
jherman@hermanlaw.com
Stuart S. Mermelstein
smermelstein@hermanlaw.com
Daniel G. Ellis
dellis@hermanlaw.com
Jason S. Sandler
jsandler@hermanlaw.com